In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 762

BENJAMIN DRANOW, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 9-17; III R. 1-9) has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered on December 16, 1963. The petition for a writ of certiorari was filed on January 15, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court abused its discretion in approving petitioner's waiver of a jury trial.

STATEMENT

On February 19, 1963, after waiving trial by jury, petitioner was convicted in the United States District Court for the District of Minnesota on a one-count indictment charging bail-jumping in violation of 18 U.S.C. 3146 (I R. 1, 152-153; II R. 265). He was sentenced to imprisonment for two and one-half years (I R. 154). The court of appeals affirmed (III R. 10).

Previously in 1961, three indictments had been returned against petitioner in Minnesota, and he had been convicted under two of them (charging mail fraud, wire fraud, fraud in bankruptcy and income tax evasion). *Dranow* v. *United States*, 307 F. 2d 545 (C.A. 8); *Dranow* v. *United States*, 310 F. 2d 375 (C.A. 8). While those convictions were on appeal, the third case, charging wire fraud, came before the court. Petitioner's failure to appear in that case was the foundation of the present charge (I R. 146-147).

On January 2, 1963, a hearing was held upon motions made in the instant prosecution for bail-jumping (I R. 29). Petitioner was not present. Petitioner's counsel moved that the wire fraud case be scheduled for immediate trial, or, in the alternative, that it be dismissed by the government (I R. 31). The government attorney announced that the charge of wire fraud was originally brought with full intention to prosecute and that this inten-

tion prevailed at the time petitioner left the jurisdiction and incurred the forfeiture of bail, but that it no longer appeared necessary to proceed to trial on the wire fraud case (I R. 32a-33). He stated that it would take several weeks to try the wire fraud case and that the government intended to move to dismiss the wire fraud case upon disposition of the instant case (I R. 33). Petitioner's counsel replied that a trial would not be as protracted as suggested by the government; he had discussed the matter with petitioner and they were willing to waive a jury in both cases (I R. 33). Following further discussion, a recess was taken to secure the presence of petitioner and to permit the government attorney to consult with an associate counsel concerning the proposed waivers (I R. 34-37).

At the resumption of the hearing, petitioner was present and was questioned concerning his understanding of the import of his suggested waivers (I R. 38-40). Petitioner replied: "I understand fully, and I will sign a waiver to have it tried without a jury" (I R. 38), but added that the wire fraud case would have to be tried before the other (I R. 41, 44-45, 46). The government attorney stated he would consent to a waiver only if it applied to both cases (I R. 42). Following discussion of collateral matters an adjournment was called for the lunch hour (I R. 61). When

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[1] The government preferred to stay dismissal of the wire fraud case, until disposition of the bail jumping case in order to avoid any possible problem of petitioner's attempting to use the dismissal of the former as a defense to the latter (I R. 34a, 65).

the hearing was again renewed, the government attorney observed that petitioner was pressing for trial on a case the government did not intend to try, and moved "that after the trial of the bail jumping charge, that the Court allow the Government to dismiss the [wire fraud charge]" (I R. 63).

> THE COURT: That is the position of the Government, regardless as to whether Mr. Dranow waives a jury on the bail jumping charge?
>
> MR. LORD [attorney for the government] Oh, that has nothing to do with it, because we are just as ready to try the case before a jury as we are before the Court. It has nothing to do with it whatsoever.
>
> THE COURT: Well that is the Government's position, Mr. Cohen [trial attorney for petitioner].
>
> MR. COHEN: I would like to have a little further clarification of the Government's position, Your Honor * * *. [I R. 64.]

It was then explained that the dismissal would take place regardless of the outcome of trial on the bail-jumping charge (I R. 66-67). Petitioner's counsel stated, "We have no objection to that" (I R. 67), and agreed to proceed with the bail-jumping case (I R. 68). Petitioner was then informed by the court that a panel would be present on the date of trial should he choose to proceed with a jury (I R. 71). Petitioner, indicating that he understood he had a right to have the case tried by a jury, then signed a waiver of jury trial (I R. 25, 72). Counsel for petitioner and for the government also signed, and the court approved the waiver (I R. 25).

ARGUMENT

The facts set forth above refute the premise of petitioner's argument—that he bargained away his right to trial by jury in return for the government's undertaking to dismiss the wire fraud charge. The government made it clear that the waiver of jury trial was unrelated to its decision to drop the wire fraud case and that it was fully prepared to try the bail jumping charge with or without a jury. Petitioner, who was represented by counsel, elected to sign a waiver after assuring the court that he was fully cognizant of his rights in the matter. His waiver of jury trial was thus knowingly and competently made.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1964

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